MOTION FILED
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-558

PRESBYTERY OF RIVERSIDE, et al.,
Petitioners

v.

COMMUNITY CHURCH OF PALM SPRINGS,
Respondent

Motion for Leave to File Brief *Amicus Curiae* and Brief *Amicus Curiae* of the Lutheran Church in America in Support of Petition for Writ of Certiorari

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MOTION OF THE LUTHERAN CHURCH IN AMERICA FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The Lutheran Church in America ("LCA") hereby moves the Court for leave to file the attached brief *amicus curiae*. Although counsel for petitioners has given his consent, counsel for respondent has withheld consent.

LCA's interest in this case is grounded in the similarities of its basic laws with the Book of Order of the United Presbyterian Church in the United States of America. The distinctions between these fundamental laws and the regulations at issue during the last term in *Jones v. Wolf*, 99 S.Ct. 3020 (1979), render this case vitally important to LCA.

WHEREFORE, the Lutheran Church in America respectfully requests that this Court grant leave to file the brief *amicus curiae* that is submitted herewith.

Respectfully submitted,

H. OBER HESS
Counsel for The Lutheran Church in America

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BRIEF *AMICUS CURIAE* OF LUTHERAN CHURCH IN AMERICA IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

INTEREST OF AMICUS CURIAE

The Lutheran Church in America ("LCA"), of which the Reverend James R. Crumley, Jr., is president, is an hierarchical church with over 6000 congregations or parishes divided into 33 synods. For reasons of concern for church government and administration and the avoidance of disruptive, if not chaotic, litigation the Lutheran Church in America is intensely interested that the Supreme Court of the United States grant certiorari in the California case of *Presbytery of Riverside v. Community Church of Palm Springs*. There are sufficient parallels between the basic laws of the Lutheran Church in America and the Book of Order of the United Presbyterian Church in the United States of America ("UPCUSA") to make it important to the LCA that the effect of the distinctions which lie between the regulations of the UPCUSA and those found in *Jones v. Wolf*, 99 S.Ct. 3020 (1979), be adjudicated.

JOINDERS IN THIS BRIEF

Amicus curiae has written requests of the following officers of the designated denominations to join in this brief, and their joinder is hereby indicated:

Rt. Rev. Charles H. Foggie, Secretary of the Board of Bishops of the African Methodist Episcopal Zion Church

Mr. T. V. Warnick, Stated Clerk of the General Assembly of the Cumberland Presbyterian Church

Most Rev. Metropolitan Philip, Primate of the Antiochian Orthodox Christian Archdiocese of North America

Most Rev. Archbishop Iakovos, Primate of the Greek Orthodox Diocese of North and South America

Archpriest Daniel Hubiak, Chancellor of the Orthodox Church in America

Rt. Rev. Dezso Abraham, Bishop of the Hungarian Reformed Church in America

Mr. James E. Andrews, Stated Clerk of the Presbyterian Church in the United States

Robert S. Wood, General Secretary/Stated Clerk of the General Assembly of the Second Cumberland Presbyterian Church

REASONS WHY THE WRIT SHOULD BE GRANTED

Amicus curiae respectfully submits that the Supreme Court of the United States should grant certiorari in this case, *if for no other reason*, to provide the Court an opportunity to clarify the application to the instant case of a number of points which it recently established in *Jones v. Wolf*, 99 S.Ct. 3020 (1979), after the final disposition of the instant case by the Supreme Court of California on May 10.

It is highly important to the hierarchical churches joining with *amicus curiae* and, in fact, to all hierarchical churches that such clarification be made in order to avert the state of chaos which unclear understandings of the reach of *Jones v. Wolf* and its modification of the settled principles of *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871), and *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976), have already threatened. Some of the points (and how their application to the facts of the instant case may clearly distinguish *Jones v. Wolf*) will be reviewed seriatim.

1.

It is said in the Court's opinion in *Jones v. Wolf*:

> And here, as in *Presbyterian Church II [Presbyterian Church v. Eastern Heights Church*, 225 Ga. 259, 167 S.E.2d 658 (1969)], but in contrast to *Carnes [Carnes v. Smith*, 236 Ga. 30, 222 S.E.2d 322, *cert. denied*, 429 U.S. 868 (1976)], the provisions of the constitution of the general church, the Book of Church Order, concerning the ownership and control of property failed to reveal any language of trust in favor of the general church.

99 S. Ct. at 3024. What particularity of language is required to create the consequence of a trust for the denomination? It is submitted that the provisions of the following parts of the UPCUSA Book of Order (absent in *Jones v. Wolf*) should be adequate:

> (a) Chapter XXXII, Section 62.12, requiring presbytery approval for sale or encumbrance of a congregation's real estate.
>
> (b) Chapter XXXII, Section 62.11, giving the presbytery power to take possession of real estate of a congregation and to apply it or its proceeds for church purposes.

> (c) Chapter XI, Section 41.15, giving the presbytery power to supplant a congregation's officials by an administrative commision with full power to deal with property titled in the congregation.

This is a question which the Court should address in the context of the instant case.

2.

It is also said in *Jones v. Wolf*, 99 S.Ct. at 3025, quoting *Presbyterian Church v. Hull Church*, 393 U.S. 440 (1969):

> It is also clear, however, that "the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes." *Id.*, at 449, 89 S.Ct., at 606. Most importantly, the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice.

and in the next sentence, citing *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. at 724-25 (1976), the following is added:

> As a corollary to this commandment, the Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization.

The instant case, unlike *Jones v. Wolf*, involves the schismatic majority of the Palm Springs congregation which took all procedural steps within the hierarchy of the UPCUSA, and in conformity with its Book of Order, to seek separation from the Church and retention of the property. This involved an application to the controlling presbytery, an appeal to the General Assembly of the Church and a reference by the Assembly to the

Permanent Judicial Commission. Only after negative action at all these stages did the Palm Springs congregation, by a majority but far less than unanimous vote, repudiate the authority of the Church and secede therefrom. Thereupon, explicitly pursuant to the Book of Order, the presbytery designated an Administrative Commission to supplant the governing body of the congregation and to take over control of all its affairs and property in accordance with Chapter XI, Section 41.15 of the UPCUSA Book of Order.

It is essential to intelligent administration of every hierarchical church in the land that the Supreme Court adjudicate the efficacy of the regulations and ecclesiastical proceedings so taken by the UPCUSA in the instant case.

3.

Jones v. Wolf, 99 S.Ct. at 3027 (footnote omitted), also makes the following suggestion for the guidance of hierarchical churches:

> At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church. The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result indicated by the parties provided, it is embodied in some legally cognizable form.

The instant case thus squarely presents the question, unanswered in *Jones*, What will constitute "some legally cognizable form"? Is the language of the Book of Order provisions referred to above — and the ecclesiastical proceedings conducted in conformity therewith — legally cognizable to create a reversion to the general church? It is submitted that it is abundantly adequate to that end. It is a serious question which merits this Court's further attention.

4.

As already stated, the secession here attempted was supported by a majority of those voting in the Palm Springs congregation. *Jones v. Wolf*, 99 S.Ct. at 3027-28, says this is not conclusive:

> Most importantly, any rule of majority representation can always be overcome, under the neutral principles approach, either by providing, in the corporate charter or the constitution of the general church, that the identity of the local church is to be established in some other way, or by providing that the church property is held in trust for the general church and those who remain loyal to it.

It is urgent that this Court deal with the application of this rule to the instant case. Here, unlike *Jones*, the articles of incorporation of the local church contained these significant clauses:

> Sixth: That this corporation shall be at all times subject and adhere to the doctrines and discipline of the Presbyterian Church of the United States of America. [Now by name change United Presbyterian Church in the United States of America.]
>
> Eleventh: That all property now owned or hereafter acquired by said corporation is and shall be irrevocably dedicated to religious and/or chari-

table purposes, and upon the liquidation, dissolution or abandonment of said corporation, all of such property subject only to prior transfer or encumbrance, in and about the carrying out of such purposes will revert, transfer and inure to the benefit of the Presbyterian Church in the United States of America, a corporation.

It is submitted that these provisions distinguish the instant case from *Jones* in a decisive way and that the Court should adjudicate the consequence of the distinction. Furthermore, the provisions of the Book of Order here involved, as well as the ecclesiastical proceedings availed of by the Palm Springs congregation, are decisively different from those applicable in *Jones* insofar as any recourse to majority rule is concerned. Indeed, in *Jones* the schismatic congregation pursued no ecclesiastical procedure at all. This distinction also merits the consideration of this Court.

CONCLUSION

For the foregoing reasons *amicus curiae* respectfully urges this Court to grant a writ of certiorari and to reverse the decision below.

Respectfully submitted,

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